

# £KUWAIT

## @Three years of unfair trials

### INTRODUCTION

Three years after the end of the Iraqi occupation, serious human rights violations continue to be committed in Kuwait. Over 120 people suspected of "collaboration" with Iraqi occupation forces, including prisoners of conscience, are believed to be serving prison terms, 19 are under sentence of death and one person has been executed after grossly unfair trials. Some were convicted by the temporary Martial Law Court - now abolished - and others by the State Security Court, which is continuing to sentence scores of defendants to death and to prison terms after trials which fail to satisfy international minimum standards. Amnesty International regrets that the Kuwaiti Government has not seen fit to take any serious action on any of the concerns about the unfairness of these trials raised with it over the past three years.

Widespread human rights violations were committed by Iraqi forces following the invasion of Kuwait on 2 August 1990. These included arbitrary detention of thousands of civilians, systematic torture of detainees, imposition of the death penalty, extrajudicial executions and "disappearances".<sup>1</sup> It is unfortunate that the Kuwaiti Government has not seen fit to apply to the conduct of its own law courts and enforcement officials those international standards which it justifiably called for during the occupation of the country. Following the withdrawal of Iraqi forces on 26 February 1991, the Amir of Kuwait declared a three-month period of Martial Law, later extended to 26 June 1991. A special Martial Law Court was established to try cases of individuals suspected of "collaboration" with Iraqi occupation forces and who were charged with state security crimes and ordinary crimes. Kuwaiti government forces and armed civilians - often acting with the knowledge or acquiescence of government officials - immediately began carrying out a campaign of arbitrary arrests, torture and extrajudicial killings of individuals suspected of "collaboration" with the Iraqi authorities. Close to 1000 people - the vast majority of whom were non-Kuwaitis - were arbitrarily detained and at least 62 of these "disappeared" between 26 February and the end of June 1991.<sup>2</sup>

According to information provided by the authorities, 164 of these detainees were tried by the Martial Law Court before it was dissolved on 26 June 1991; 118 were convicted,

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<sup>1</sup> See, for example, *Iraq/Occupied Kuwait: Human rights violations since 2 August* (AI Index: MDE 14/16/90); *Iraq: Secret detention of Kuwaitis and third-country nationals* (AI Index: 14/05/93).

<sup>2</sup> See Amnesty International, *Kuwait: Cases of "disappearance", incommunicado detention, torture and extrajudicial execution under Martial Law* (AI Index: MDE 17/02/92).

of whom 34 had been tried *in absentia*; and 29 of those convicted were sentenced to death. The Martial Law Court denied defendants their right to fair trial as guaranteed by international standards, the Kuwaiti Constitution and Kuwaiti law at every stage of the proceedings. Most defendants were denied access to their families, lawyers and independent medical attention, many were tortured and all were denied the right to prompt access to a judge. Many defendants were unaware of the charges against them until the day of the trial. The charges and the state security crimes were frequently so vague or broadly defined that it was difficult to prepare a defence. Defendants did not have adequate time or facilities to prepare their defence and often did not see the evidence against them or learn the identity of prosecution witnesses. Judges were not independent or impartial and failed to investigate claims of torture adequately. Those who were convicted were denied the right to appeal. After widespread criticism of the unfair trials by many observers, including Amnesty International, which appealed to the Kuwaiti authorities on 11 June 1991 "to call a halt to the trials until all the defendants can be guaranteed fair trial", the 29 death sentences were commuted and some prison sentences reduced on 26 June 1991. Fifty-five defendants are believed to be still serving prison sentences and the authorities have failed to account for at least 40 people known to have been defendants in the Martial Law Court.

Amnesty International believes that the cases of more than 450 defendants which had not been tried by the Martial Law Court before it was dissolved were transferred to another special court, the State Security Court, which began trying cases of alleged "collaborators" in April 1992; some cases involving minor criminal offences were transferred to ordinary courts. Amnesty International had long-standing concerns before the Iraqi occupation about unfair trials before the State Security Court, including denial of prompt access to families and lawyers, failure to exclude confessions made under torture, *in camera* trials, failure to issue written judgments and denial of the right to appeal. Although there were a number of changes in the procedure of the State Security Court in September 1991, such as the requirement to conduct preliminary hearings as in ordinary criminal cases, which led to the release of many defendants before trial, the State Security Court has continued to deny defendants the right to a fair trial at every stage of the proceedings. The independence of State Security Court judges is not adequately guaranteed and those convicted are denied the full right of appeal. The Public Prosecutor, Muhammad 'Abd al-Hay al-Bannay, informed Amnesty International in May 1992 that 150 of the detainees transferred to the State Security Court had been released before trial. By 31 January 1994 at least 95 had been reported convicted and 47 acquitted. Twenty-four of those convicted were sentenced to death (two *in absentia*). One person has been executed and two death sentences were reduced by the Court of Cassation, one to life and one to six months' imprisonment. Trials against scores of others detained since early 1991 are continuing. Some of those acquitted by the State Security Court are still in detention.

Amnesty International has closely followed the trials of political prisoners and prisoners of conscience in Kuwait. In May 1990, before the Iraqi invasion, it was the first

international non-governmental organization to observe trials before the State Security Court. The organization visited Kuwait in March-April 1991, May-June 1991, November 1991 and May 1992 to observe trials of alleged "collaborators" before the Martial Law Court and the State Security Court and to investigate other human rights violations. All of Amnesty International's concerns about the unfairness of the trials in these courts and the continued detention of those acquitted have been repeatedly raised with the authorities. Amnesty International regrets that the Government of Kuwait has not seen fit to take any serious action on any of the concerns raised with it over the past three years. The replies from the authorities have failed to address most of Amnesty International's concerns or to supply requested information.

Article 34 of the Kuwait Constitution guarantees all defendants a fair trial: "An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right to a defence are secured." Some of these necessary guarantees are found in the Kuwaiti Criminal Procedure Code. Kuwait is a party to the Geneva Conventions of 12 August 1949 and Additional Protocol I, which spells out fair trial standards in Article 75. Although Kuwait is not a party to the International Covenant on Civil and Political Rights (ICCPR), Article 14 of that treaty is universally accepted as defining minimum standards for a fair trial. Kuwaiti authorities have consistently assured Amnesty International that trials in the special courts fully satisfied international standards.

### **SPECIAL COURTS IN KUWAIT**

Neither the Martial Law Court nor the State Security Court satisfy the requirements of Article 10 of the Universal Declaration of Human Rights, the United Nations (UN) Basic Principles on the Independence of the Judiciary (UN Judiciary Principles) or Article 163 of the Kuwaiti Constitution that criminal courts be independent and impartial.

Principle 5 of the UN Judiciary Principles provides that everyone has "the right to be tried by ordinary courts or tribunals using established procedures" and prohibits the creation of tribunals that do not use such procedures to displace the jurisdiction of ordinary courts. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, citing several countries including Kuwait, recently expressed his concern at

"the establishment of special jurisdictions to speed up proceedings leading to capital punishment in certain cases. . . Such special courts often lack independence, for example, because the judges are accountable to the executive, or because they are military officers on active duty within the chain-of-command structure of the army. Time-limits which are sometimes set for the conclusion of the different trial stages

before such special jurisdictions gravely affect the defendants' right to an adequate defence."<sup>3</sup>

The Martial Law Court was a special court created to displace temporarily the jurisdiction of ordinary courts and the special State Security Court. Although Article 8 of Martial Law No. 22 of 5 June 1967 states that cases should be investigated according to the Criminal Procedure Code, it also permits these procedures to be "condensed by order of the Martial Law Governor" (the Crown Prince) and states that the Martial Law Court "shall specify its trial procedures, using the basic principles in the Criminal Procedure Code as a guide".

Amnesty International is not aware of any written order modifying ordinary investigation and trial procedures, but judges of one panel of the Martial Law Court told the

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<sup>3</sup> UN Doc. E/CN.4/1994/7, para. 681.

organization that they followed the restrictive procedures of Law No. 26 of 1969 (State Security Law) establishing the State Security Court rather than ordinary procedures. The then Minister of Justice and Legal Affairs, Ghazi al-Sammar, told Amnesty International that the Martial Law Court was permitted to "shorten" and "abbreviate" procedures. Judge Muhammad Jassem bin Naji explained that "one advantage of the Martial Law is that it has given us a lot of manoeuvrability".

Article 7 of the Martial Law fails to satisfy the requirement of Principle 10 of the UN Judiciary Principles that judges be "individuals of integrity and ability with appropriate training or qualifications in law" as it provides that panels of judges must include military officers, who are not required to have any training in law. Principle 1 of the UN Judiciary Principles states that "[i]t is the duty of all governmental and other institutions to respect and observe the independence of the judiciary" and Principle 2 requires the judiciary to "decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter for any reason". It was troubling that when the Amnesty International delegate met Judge Muhammad Jassem bin Naji and other members of one Martial Law Court panel he found them sitting at a large table covered with court files and talking with the prosecutor at the previous day's session. No explanation was offered for this appearance of impropriety by the judges or the prosecutor, who remained throughout the interview.

The method of appointment of judges to both the Martial Law Court and the State Security Court fails to "safeguard against judicial appointments for improper motives" as required by Principle 10 of the UN Judiciary Principles. Article 7 of the Martial Law provides that the Martial Law Authority appoints the military officers and the Minister of Justice and Legal Affairs appoints the civilian judges in the Martial Law Court. Article 1 of Decree Law No. 10 of 1990 provides that the Minister of Justice and Legal Affairs appoints judges to panels of the State Security Court after consultation with the Supreme Judicial Council, a body appointed on recommendation of this minister.

## **VAGUENESS AND BROAD NATURE OF STATE SECURITY CRIMES**

Almost all the defendants in the Martial Law Court and the State Security Court were charged with crimes related to state security as defined in Articles 1 to 34 of Law No. 31/1970 (amending certain provisions of Penal Code No. 16/1960). These provisions, particularly those involving the death penalty, are unacceptably broad and vague. For example, Article 1 (a) of the Penal Code provides the death penalty for anyone "who deliberately commits an act which results in undermining the independence of or unity of the country or the integrity of its territory" and Article 6 (a) provides the death penalty for anyone "who in the interest of the enemy involves himself in arrangements to shake the loyalty of the armed forces or undermined their spirit or the moral spirit of the people or its strength of resistance". Article 5 provides that anyone who, during time of war "requests for himself or

for others or who accepts or takes money or other gain or a promise of the like, even if by intermediary, from a foreign state or a person working in its interest with intent to commit an act harmful to the national interest of the country" will be sentenced to life imprisonment. Such vaguely worded laws do not make clear to the public, judges and lawyers what conduct is criminal and could include a wide range of acts of different gravity, all of which carry the death penalty or lengthy prison sentences.

## **VIOLATIONS OF DEFENDANTS' RIGHTS IN PRETRIAL DETENTION**

The rights of those detained on suspicion of "collaboration" with the Iraqi authorities were violated at every stage while they awaited trial during the period of Martial Law. In many cases, the Kuwaiti authorities have continued, since the end of Martial Law, to violate the rights of defendants as they awaited trial before the State Security Court.

*Failure to inform defendants at the time of arrest of the charges against them or of their rights.* International standards, including Article 14 (3) (a) of the ICCPR and Principle 10 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles), require that anyone who has been arrested should be informed at the time of the arrest of the reasons for the arrest and be promptly informed of any criminal charges. Principle 13 of the UN Body of Principles requires that the arresting authorities must provide every detainee at the moment of arrest "with information on and an explanation of his rights and how to avail himself of such rights". In particular, Article 14 (3) of the ICCPR and Principle 17 (1) of the UN Body of Principles require notification of the right to counsel. It is essential, particularly at a time when emotions run high and there is a risk that the desire for revenge may impede the course of justice, that defendants be informed of their rights if they are to be able to exercise their rights effectively.

The Kuwaiti Criminal Procedure Code does not require that the arresting authorities inform defendants at the time of arrest of the reason for their arrest, of the charges against them, or of their rights. Amnesty International's delegate was unable to find any evidence that the arresting authorities had ever informed defendants of these matters. Indeed, in the period of Martial Law many defendants were unaware of the charges against them or that they had the right to a lawyer until they were brought before the judge on the day their trial began.

*Denial of the right to prompt access to the outside world.* International human rights standards require that anyone who has been arrested have prompt access to his or her family, lawyer, doctor and, if a foreigner, to his or her consul. The Kuwaiti authorities denied these rights to persons arrested during the Martial Law period. Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners (UN Standard Minimum Rules) states that a detainee "shall be allowed to inform immediately his family of his detention and

shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them". Principles 15 and 16 (4) of the UN Body of Principles make clear that, even in exceptional circumstances, communication with one's family may "not be denied for more than a matter of days".

Speedy notice and access to families and friends is important not only to the morale of the person under arrest and as a safeguard against torture and "disappearance", but to enable the detainee's family and friends to help prepare the defence by locating counsel and witnesses. During the Martial Law period families of defendants were rarely notified that their relatives had been arrested or where they were held; often the authorities denied that they were being held. Indeed, some families were unaware until the first day of the trial that their relative was alive and in detention.

Detainees with non-Kuwaiti nationality - almost all the detainees - were deprived of an additional safeguard: access to a consul or diplomatic mission. One consul for a Middle Eastern country showed Amnesty International's delegate voluminous correspondence in which he had unsuccessfully sought information from the Kuwaiti authorities concerning nationals of his country who had been arrested. In one case, where the authorities told the consul that a particular national of that country who had "disappeared" was not in detention, the delegate saw him brought into court. Nationals of countries without such consular or diplomatic representation often had no access to the outside world, even in some cases to the International Committee of the Red Cross (ICRC), during the period of Martial Law. Amnesty International received reliable reports of certain detainees being moved to other places of detention before visits by the ICRC.

Principle 7 of the UN Basic Principles on the Role of Lawyers states that governments must "ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention". The right of prompt access to a lawyer applies at all times, even in a state of emergency. Principle 15 of the UN Body of Principles makes clear that even in exceptional circumstances a detainee's right "to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel" as recognized in Principle 18 (3) "shall not be denied for more than a matter of days".

Detainees did not have prompt access to lawyers during the period of Martial Law. They were not informed of their right to have a lawyer and the Criminal Procedure Code did not guarantee access to a lawyer until the defendant appeared before the prosecutor, who could refuse such access. After complaints by the Kuwaiti Lawyers Association, the Attorney General stated in April 1991 that lawyers would be permitted to see their clients if they applied to him for permission. Lawyers were not, however, permitted to visit detainees who did not have lawyers to inform them of their rights. Several Kuwaiti lawyers informed Amnesty International that even in cases where a family was able to retain a lawyer for their

relative before trial, the lawyer was often unable to obtain permission to see the defendant or unable to locate the defendant, including those whose names had appeared on the list of those charged in the Martial Law Court, until the day of the trial.

Rule 24 of the UN Standard Minimum Rules provides that the medical officer of every detention facility "shall see and examine every prisoner promptly after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures". Principle 24 of the UN Body of Principles contains a similar guarantee. Rule 91 of the UN Standard Minimum Rules guarantees the right of detainees to be visited and treated by their own doctor. Defendants during the Martial Law period did not have prompt access to medical attention or to their own doctors, which made it difficult to document their complaints of torture with contemporaneous and independent medical reports.

*Denial of the right to prompt access to a judge and to challenge the detention.* Article 9 (3) of the ICCPR guarantees that "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power", and Principles 11 and 37 of the UN Body of Principles contain similar guarantees. Prompt access to a judge provides an important safeguard against torture and "disappearance" by ensuring that the detention is under judicial supervision. When Martial Law was declared, Article 60 of the Criminal Procedure Code required the arresting authorities in ordinary criminal cases to bring a defendant before an investigator within 24 hours or release the defendant. The prosecutor could issue a written order placing the defendant in preventive detention, but had to bring the defendant before a judge for a renewal hearing within three weeks from the date of arrest - a period which is far longer than that permitted by international standards - at which the defendant was required to be heard (Article 69). The prosecutor had to present the defendant to a judge at renewal hearings to justify continued detention every 15 days for six months and thereafter before the trial court at 30-day intervals until the investigation was completed (Articles 69, 70 and Commentary).

Several judges of the Martial Law Court, however, informed Amnesty International under the State Security Law that they had no power to release a defendant until the trial. The failure to bring detainees promptly before a judge not only facilitated widespread torture, coerced confessions and "disappearance" of detainees before trial, but made it impossible to seek pretrial dismissal of charges or release on bail. The September 1991 amendments to the State Security Law extended the deadline for presenting the detainee to the prosecutor from 24 hours to four days, but authorized the State Security Court for the first time to conduct pretrial renewal hearings with time limits similar to those in ordinary cases. Amnesty International was informed in May 1992 that approximately 150 detainees had been released by the State Security Court in renewal hearings and it believes others have

been released since that date.<sup>4</sup> Several Kuwaiti lawyers said that often they were not informed of these hearings and they often took place in the absence of the defendant or the defence lawyer. Amnesty International attended two renewal hearings in November 1991 involving nine detainees, only one of whom was represented by a lawyer. Some of those released were then placed in detention pending deportation. In other cases, the prosecutor reportedly initiated a new investigation.

Detainees also have been denied their internationally recognized right to challenge the lawfulness of their detention and be released if that detention was unlawful. Article 9 (4) of the ICCPR guarantees that any detainee "shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". Principles 32 (1) and 37 of the UN Body of Principles contain similar guarantees. The UN Special Rapporteur on torture has emphasized that this right applies even in a state of emergency.<sup>5</sup> A number of Kuwaiti lawyers told Amnesty International that defendants are not able to challenge the lawfulness of their detention in renewal hearings. Such hearings also do not satisfy the requirement of a speedy remedy.

*Torture and ill-treatment in pretrial detention.* Article 31 of the Kuwaiti Constitution declares: "No one shall be subjected to torture or degrading treatment." Nevertheless, in the first six or seven months after the withdrawal of Iraqi forces, Kuwaiti government forces and armed civilians acting in collaboration with government forces or with their acquiescence tortured or ill-treated many detainees. Indeed, the Crown Prince publicly stated in May 1991 that residents of Kuwait were living "in the shadow of terror, fear and fright" and that some of them had been taken to police stations where they could be "tortured". He called on the Ministry of Interior to remove "disillusioned and bad elements from its ranks". Amnesty International believes that this directive has not been implemented. Many detainees said that they made "confessions" after such torture and ill-treatment. Many of these detainees, such as Salem Hashush Rashed 'Ubaid, Salem 'Abdallah Ridha Hussain al-Shatti, Samih Muhammad 'Ali al-Zarkani, Khalaf 'Alwan Jallud al-Maliki and Ihsan Sabri Sawadi al-Mansuri, were subsequently convicted. Many detainees were afraid to make complaints to the prosecutor because they continued to be detained by the arresting authorities or security forces which had tortured them and threatened to torture them again if they complained to the prosecutor.

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<sup>4</sup> Salah al-Fahad, the President of the State Security Court, assured Amnesty International during its May-June 1992 visit that it could obtain the names of all detainees who had been released, as well as information about their cases, but the authorities have failed to provide Amnesty International with this information despite repeated requests.

<sup>5</sup> UN Doc. E/CN.4/1991/17, para. 294.

Article 8 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that anyone who has been tortured or ill-treated "by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned." Article 9 requires the authorities promptly to conduct an impartial investigation whenever there is reasonable ground to believe that torture has occurred "even if there has been no formal complaint". In addition, Article 16 of the UN Guidelines on the Role of Prosecutors requires prosecutors who "come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice".

There is a large body of medical literature on the professional standards for investigation of allegation of torture.<sup>6</sup> This literature makes clear that documentation of torture in many cases is a difficult, lengthy process requiring careful training and following strict standards. Nevertheless, if these accepted practices are scrupulously followed, physical and psychological evidence of torture can often be documented by a doctor, psychiatrist or psychologist. It is essential that the professionals conducting the examination establish a relationship of trust with the detainee and conduct an in-depth interview concerning the circumstances of the torture, including the clothing worn, the techniques used, the length of time the torture was inflicted, the strength of the blows, the people responsible and the symptoms at the time of torture and at the time of the examination. The physical consequences of torture, such as scars, should be described and measured using appropriate techniques such as photography, electroencephalograms, x-rays and sleep studies. Certain types of scars are usually associated with torture, and modern techniques such as skin biopsy, serum and urine analysis can differentiate between injuries caused by torture and other types of injuries. The medical examination should be supplemented with a thorough psychological examination, with special attention to post-traumatic stress disorder and depression. Such psychological examinations are particularly important when the physical signs of torture are difficult to document. If the investigation is conducted by a government

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<sup>6</sup> See, for example, Physicians for Human Rights, *Medical Testimony on Victims of Torture: A Physician's Guide to Political Asylum Cases* (1991); G.R. Randall & E.L. Lutz, *Serving Survivors of Torture* (American Association for the Advancement of Science 1991); Danish Medical Group, Amnesty International, "Examining Torture Survivors", *Quarterly Journal on Rehabilitation of Torture Victims*, Supplementum No. 1 (1992); Allodi, "Assessment and Treatment of Torture Victims: A Critical Review", *The Journal of Nervous and Mental Disease*, vol. 179, No. 1 (1991); Goldfield *et al.*, "The Physical and Psychological Sequelae of Torture: Symptomatology and Diagnosis", *The Journal of the American Medical Association*, vol. 259 (1988).

doctor, it is essential to have an independent observer present, particularly when there is a possibility that those conducting the investigation lack expertise or impartiality, there is an apparent existence of a pattern of abuse or those who are being examined complain about these inadequacies.

Despite numerous reports indicating widespread torture of detainees, visible scars on many detainees and some complaints to the prosecutors, and the high quality of medical expertise in Kuwait, prosecutors did not conduct thorough investigations using modern techniques in consultation with qualified independent experts. Amnesty International is unaware of any information indicating that the prosecutors or the courts conducted a single thorough and impartial investigation, in accordance with accepted medical practice. Although several Kuwaiti officials, including the Attorney-General, the Minister of Interior and a prosecutor, told Amnesty International that if a medical examination showed that a defendant had been subjected to physical or psychological torture the investigator responsible would be prosecuted, Amnesty International is aware of only one prosecution for violations of the rights of detainees resulting in a conviction.<sup>7</sup> Despite repeated requests by Amnesty International to Kuwaiti officials, including the Public Prosecutor, the Minister of Justice and Legal Affairs, the Attorney-General, the Minister of Interior, the International Organizations Liaison Officer of the Ministry of Interior and the President of the State Security Court, for copies of medical reports and reports of investigations, none of these officials have supplied the organization with these documents.

The prosecution investigation file dated 18 May 1991 in the case of 'Umar Shehadeh 'Abdallah Hamdan Abu Shanab, one of the few such files Amnesty International has been able to obtain independently, suggests the cursory nature of inquiries conducted by the prosecutor in the Martial Law period during the investigation stage concerning reports of torture. The prosecutor noticed that the defendant had skin injuries, including two cigarette burns, and sent him to a government doctor for an examination. The doctor did not supply a medical report, but simply sent a note stating that the injuries were "healing" and that the injuries were the result of a skin disease. The note contained no explanation of the burns or the method of the examination. The prosecutor did not question the security forces who had custody of the defendant, or demand that they provide records of his detention. The defendant was sentenced to 15 years' imprisonment. Other cases described in this report also indicate that investigations of complaints of torture failed to satisfy accepted professional standards.

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<sup>7</sup> On 1 December 1993 the Kuwaiti Ambassador to the United States informed Amnesty International that "not long ago a state security officer was stripped of his rank and sentenced to prison for the death of a defendant while in custody", but provided no further information about this case.

*Denial of the right to prepare a defence.* Defendants in the Martial Law period were denied the right recognized in Article 14 (3) (b) of the ICCPR to have adequate time and facilities to prepare their defence and to communicate with counsel of their own choice. Principle 18 (2) of the UN Body of Principles contains a similar guarantee. Principle 21 of the UN Basic Principles on the Role of Lawyers requires the authorities "to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients" and to provide such access "at the earliest appropriate time". Article 7 (2) of the State Security Law requires that the defendant receive a copy of the charges and a list of the prosecution witnesses at least ten days before the trial and that the defence lawyer receive the findings of the investigation at least seven days before the trial. Although the State Security Law falls short of international standards, even these limited requirements were not respected during the period of Martial Law. Defendants rarely had access to a lawyer or learned of the charges before trial. Even in the small number of cases where defendants had been able to retain lawyers before trial, the lawyers generally were unable to have access to the file until after the trial had started. Lawyers began to get access to clients before the trial in the middle of June 1991.

#### **FLAWS IN INVESTIGATION HEARINGS CONDUCTED BY THE PROSECUTOR**

The investigations conducted by the prosecutor or under the prosecutor's supervision are a crucial - and often determining - stage in the preparation for the trial under the Kuwaiti legal system. At these hearings the prosecutor marshals the evidence, interviews witnesses, questions defendants and prepares the file to be sent to the court. Defendants are entitled under Articles 75 and 98 of the Criminal Procedure Code to have a lawyer present during the investigation before the prosecutor and to remain silent until their lawyer is present. In May 1991 a prosecutor told Amnesty International that defendants were informed of these rights. Nevertheless, many lawyers said that prosecutors did not tell defendants during the Martial Law period - and, apparently, rarely afterwards - about these rights. None of the investigation files which Amnesty International has been able to obtain indicate that the prosecutor ever informed defendants of their rights during investigations before or after the end of Martial Law, or that lawyers were present.

The Martial Law Court did not appoint lawyers for unrepresented defendants until after the trial began, although several lawyers said that before the occupation ordinary courts had sometimes appointed counsel during the investigation phase. Article 75 of the Criminal Procedure Code states that lawyers are not entitled to speak during the investigation unless the investigator permits it. Only a small number of Kuwaiti lawyers stepped forward to represent defendants before the Martial Law Court and others set high fees - as much as 10,000 Kuwaiti dinars (approximately US\$ 34,000) in some cases - which most defendants were unable to afford. Court-appointed counsel received only 10 Kuwaiti dinars

(approximately US\$ 34) per case. In part because of these factors, lawyers did not appear at hearings conducted by the prosecutor and detainees were unable to present an effective defence at this critical stage.

Amnesty International received numerous reports indicating that the investigation hearings were unfair. In many cases, the prosecutor reportedly failed to inform counsel of the dates and location of investigation hearings, to inform defendants of their rights or even to provide defendants with copies of the charges and evidence against them as required by Article 75 of the Criminal Procedure Code. Such investigations often were not thorough. For example, the report of the investigation of Ibtisam Berto Sulaiman al-Dakhil, a Kuwaiti national and a defendant in the *al-Nida'* case, indicates that the prosecutor never required the investigator, Captain 'Abdallah Muhammad al-Turajji, to provide the names of any of the "secret sources" he cited so that the reliability of his testimony could be tested by questioning those sources. She told Amnesty International that the prosecutor "refused to listen" to witnesses in her defence.

Amnesty International is not aware of any investigations in the Martial Law period which were public, even though Article 75 of the Criminal Procedure Code requires that the investigator justify to the court a decision to conduct a secret investigation. Under the State Security Law, which the Martial Law Court was applying, investigations are secret unless otherwise decided. Amnesty International's delegate requested permission during both visits to attend investigation hearings conducted by the prosecutor. During the first visit, judges of the Martial Law Court and the then Under-Secretary of the Ministry of Justice and Legal Affairs, 'Abd al-Aziz al-Dakhil, said it would be possible to do so, but Attorney-General Hamid al-Uthman said that the presence of an outside observer would be "illegal". He informed Amnesty International that both the hearing and any documents related to the hearing had to remain confidential until trial. When he was asked whether documents related to the prosecutor's investigation could be made public after judgment, he said that they could not be made public unless the Chief Judge of the Martial Law Court granted permission. The investigation files have never been made public. Attempts during Amnesty International's visit in May 1992 to attend investigation hearings and to obtain investigation files in cases presented to the State Security Court were also fruitless. The failure to make this critical stage of the proceedings public is inconsistent with the right to a public trial, guaranteed by Article 10 of the Universal Declaration of Human Rights and Article 14 (1) of the ICCPR.

Although reports of torture declined substantially by the autumn of 1991, incidents of torture in custody continued to be reported and many defendants remained reluctant to make complaints of torture to the prosecutor. A leading Kuwaiti lawyer informed Amnesty International that lawyers have been reluctant to raise complaints of torture before the State Security Court because signs of torture were now no longer visible and they did not want to antagonize the court if the complaints could not be verified.

## **UNFAIR TRIALS BEFORE THE MARTIAL LAW COURT**

Martial Law Court trials were manifestly unfair. Defendants often had to answer vague and broadly worded charges and had difficulties in locating witnesses. In the cases observed by Amnesty International, the court never warned defendants of their right to remain silent before the court or prosecutor began questioning them. It permitted the prosecutor to rely on "secret sources" and hearsay testimony and to use documentary evidence which had not been shown to the defendant or defence lawyer before the defendant was questioned. It did not vigorously investigate claims of torture or exclude "confessions" made after torture. In all but a handful of cases, it did not issue written judgments.

Not only were the state security provisions of the Penal Code under which defendants were charged often vague and broadly worded, but the charges were frequently too vague to satisfy the requirement in Article 14 (3) (a) of the ICCPR that defendants be informed "in detail" of "the nature and cause of the charge" against them. Some defendants were charged with acts which involved non-violent expression. For example, 12 Iraqis and one Jordanian who were members of an Iraqi artistic group were charged with collaborating with the Iraqis "by holding musical parties" and "[d]eliberately spreading provocative propaganda, during time of war, to weaken morale in the country and praise the Iraqi occupying forces . . . by openly holding musical evenings".

Trials took place in a large court room in the Palace of Justice in the presence of guards in combat uniforms carrying automatic weapons. The prosecutor sat at the left side of the same bench as the judges. Almost all the defendants sat in a large metal cage on the left side of the courtroom, except when there were too many defendants to fit into the cage or the defendant was not in detention. Rule 93 of the UN Standard Minimum Rules and Principle 18 (3) of the UN Body of Principles guarantee the right of the defendant to communicate with counsel in full confidence. Nevertheless, it was impossible for defendants in the cage to consult with their counsel except for an occasional shouted instruction or a brief consultation during a recess - if the guards permitted it - through the bars of the cage in the sight and hearing of the guards and fellow defendants. Defendants were usually brought out of the cage to stand in front of the judges when testifying, but could not then confer in confidence with their lawyers.

The trials were primarily a review by the court of the testimony and evidence presented by the investigator at the hearing before the prosecutor. It was often difficult for defence lawyers to locate witnesses who had testified during the prosecutor's investigation to re-examine them at trial or to locate defence witnesses because of the delays in photocopying investigation files before the trial and because the authorities cut off telephone service to Palestinian districts. Thousands of non-Kuwaitis, many of whom were potential defence witnesses, were being deported during the Martial Law period. Those who remained often risked arbitrary detention on the way to court, followed by possible torture, "disappearance" or extrajudicial execution, at checkpoints throughout Kuwait.

Trials normally began with the President of the panel asking the defendant if he or she had a lawyer. If, as usually was the case, a defendant did not have a lawyer, the court would appoint one of the lawyers sitting in the front row of seats without giving the defendant an opportunity to choose a lawyer. After the judge or prosecutor read the charges to the defendant - who often stated that he or she had not been informed of them before - the judge would begin questioning the defendant without warning the defendant of the right under Article 155 of the Criminal Procedure Code to remain silent or giving the defendant an

opportunity to consult with the lawyer. In some cases, the judge would begin questioning an unrepresented defendant about the charges before he appointed a lawyer.

Lawyers for the 22 defendants in the first trial before the Martial Law Court on 19 May 1991 were appointed that morning and had no opportunity to consult with their clients, to call witnesses or examine the evidence. The trial reportedly lasted about an hour and verdicts were issued that afternoon. In subsequent trials, however, the Martial Law Court permitted lawyers to request adjournments for two weeks to photocopy documents. Because of substantial delays in photocopying, however, lawyers often had only a few days to review the file and attempt to locate witnesses before the trial resumed.

Judges of some of the Martial Law Court panels in proceedings observed by Amnesty International rushed through proceedings. They often did not give defendants adequate time to answer questions. Judge Muhammad Jassem bin Naji told a defendant, Khalid Jamal Mansur Rashed, on 25 May 1991 who said that his confession had been coerced, "Hurry up, don't make a long story of it". He told another defendant, Muhammad 'Abbas Khalawi, to "be brief". In many cases, the court proceeded so quickly that it was impossible for observers to note crucial details, including the names of the defendants concerned. The hostile questioning of defendants by some judges called into question their impartiality.

The civil law doctrine of *intime conviction* permits the judge to weigh all the evidence, even hearsay, in accordance with the judge's conscience or innermost conviction. As interpreted by Kuwait courts, this doctrine permits the court to rely on any evidence, including the minutes of the prosecutor's still non-public investigations, and on logical deductions.<sup>8</sup> However, the civil law doctrine<sup>9</sup> and the presumption of innocence guaranteed

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<sup>8</sup> The Martial Law Court explained the doctrine of *intime conviction* in the only judgment of that court which Amnesty International has been able to obtain:

"It is also an established legal rule, based on precedents, that in order that an [item of] evidence may be adopted by the court, the judge should be convinced thereof and should be satisfied of the evidence submitted to the court. The law gives the judge the power to adopt any evidence that he deems satisfactory irrespective of the source thereof, whether it be the investigations conducted at the court hearing or the investigations of the Attorney General's Department or the minutes of investigations or *procès-verbal* establishing the occurrence of the incident, as well as all deductions."

*Attorney-General v. Fatima Ramez Tafla*, Case No. 18/91-1/91 (martial) (citation omitted), pp. 5-6.

<sup>9</sup> For example, the standard of free evaluation of the evidence (the German rendering of *l'intime conviction*) "does not permit German courts to convict on whim. It is limited by the maxim *in dubio pro reo*: in doubt decide for the accused . . . As a practical matter this maxim mandates a standard of proof substantially similar to the Anglo-American burden of persuasion beyond reasonable doubt." J. Langbein, *Comparative Criminal Procedure: Germany* (1977), p. 79.

by Article 34 of the Kuwaiti Constitution limit the judge's discretion. Moreover, the requirement in ordinary criminal cases in Kuwait that the court issue a written judgment explaining how it reached its verdict and sentence is a partial safeguard against abuse by providing an independent basis for the public and the appellate court to assess whether the judgment is in accordance with the law and facts. Although Article 14 (1) of the ICCPR requires that "any judgment rendered in a criminal case . . . shall be made public", the Martial Law Court never made public any written judgments explaining the reasons for its verdicts and sentences. Amnesty International has been able to obtain a copy of only one judgment, in the case of a Lebanese woman, Fatima Ramez Tafla, and this was through non-government sources, but it believes that some other judgments exist which have not been published or given to the defendants or their lawyers.<sup>10</sup> The failure of the Martial Law Court to issue judgments or explanations of its decisions in all but a handful of cases makes it difficult, if not impossible, to determine to what extent the court relied on "secret sources", hearsay evidence and evidence which was not shown to the defendants or their lawyers.

The authorities provided Amnesty International with a chart indicating the decisions of the Martial Law Court in some of the cases. According to this list, 164 of these detainees were reportedly tried by the Martial Law Court before it was dissolved on 26 June 1991; 118 were convicted of whom 34 had been tried *in absentia*; and 29 of those convicted were sentenced to death.<sup>11</sup> The 29 death sentences were commuted and some prison sentences reduced or suspended on 26 June 1991.

*Failure to investigate torture claims vigorously.* If the court determines that a statement of the defendant was made under torture or coercion, Article 159 of the Criminal Procedure Code requires it to exclude the statement as evidence. None of the panels of the Martial Law Court at the proceedings attended by Amnesty International vigorously investigated complaints of torture by defendants, even when they showed the court visible scars which were consistent with claims of torture. The court usually asked the prosecutor to refer the defendants to a government forensic expert. In many cases, the torture had reportedly occurred weeks or months before and visible signs were sometimes hard to detect. Several Kuwaiti officials, however, told Amnesty International that they would not

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<sup>10</sup> After widespread public criticism of the court's judgment in the case of one of the 22 defendants tried on 19 May 1991, Adnan Abboud Hassen Ali, who was charged with weakening the morale of the population by wearing a shirt with a picture of the Iraqi president, among other offences, and sentenced to 15 years' imprisonment, the President of the Martial Law Court panel issued a public statement, entitled, "The T-Shirt Guy", explaining the reasons for its verdict and sentence. This statement, however, does not appear to be a formal judgment and did not discuss the other 21 defendants.

<sup>11</sup> The chart does not include information concerning all persons known to Amnesty International to have been defendants in the Martial Law Court. Amnesty International is seeking further information from the authorities about these people. See Appendix B.

accept the services of international experts who were skilled in detecting signs of torture. Judges of one panel said that they would not accept the report of an ordinary doctor made close to the time of the reported torture if a later forensic report was inconclusive. One of these judges said that if a defendant made a confession in police or security force custody and disavowed it before the prosecutor, the court would exclude it, but "if he confesses before the prosecutor, that's it, without any doubt." Acting Attorney-General Hamid al-Uthman said that if it was proved that a defendant had confessed after having been tortured the defendant would be acquitted.

Proper investigation of torture reports requires a careful, thorough investigation in accordance with accepted medical practice. None of the panels in the hearings Amnesty International observed took any steps to ensure that independent investigators examined the registers of places of detention, investigation records and medical reports, that they interviewed all those who had custody of the defendant or who had been detained with the defendant and that they followed accepted medical practice. For example, on 29 May 1991 after his attorney left the courtroom, Khalaf 'Alwan Jallud al-Maliki, a 74-year-old Iraqi poet, showed the court scars which he said had been the result of torture. Ihsan Sabri Sawadi al-Mansuri, a 45-year-old Iraqi, who composed music for one of al-Maliki's poems, showed the court scars on his hands and wrist which he said had been inflicted during torture by Kuwaitis. He had to be helped to sign the court register and could not open his hands to be fingerprinted. The court did not announce any investigation of the complaints during the session observed by Amnesty International and both were later convicted.<sup>12</sup> Amnesty International has repeatedly requested the authorities to provide copies of all medical reports and the court files which would indicate what action the Martial Law Court took on the complaints of torture, but it has never received any documents in response to these requests.

***The al-Nida' trial.*** The trial of the 24 employees of the Iraqi-run newspaper, *al-Nida'*, two of whom were tried *in absentia*, illustrates many of the flaws in the trials conducted by the Martial Law Court. Apart from a preliminary hearing on 21 May 1991, the entire trial took place on one day, 2 June 1991. The defendants were charged with "collaborating" with Iraqi occupation forces based on their connections with the newspaper, which included editing, writing articles, translating documents, performing secretarial services and attempting to repair a broken toilet bowl. Defendants were denied their right to cross-examine the key prosecution witness against them, a "secret source" who never entered the courtroom. The identity of the "secret source" was concealed not only from the defendants and their counsel but from the judges and the prosecutor as well. The evidence of this "secret source" was relayed by a Kuwaiti intelligence investigator, Captain 'Abdallah Muhammad al-Turajji. The

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<sup>12</sup> Khalaf 'Alwan Jallud al-Maliki was sentenced to life imprisonment, which was later reduced to 15 years' imprisonment by the Martial Law Governor. Ihsan Sabri Sawadi al-Mansuri was sentenced to five years in prison, but his sentence was later suspended by the Martial Law Governor.

investigator, who said that he left Kuwait during the occupation, testified that his information was based on statements made by the defendants when he arrested them - at a time when they were being held incommunicado - or acquired through "secret sources" which he could not reveal because of "the public interest". The President of the panel, repeatedly denied requests for information about the identity of the "secret source" by lawyers who said that they could not conduct an effective defence without this information.

Several times the President of the panel answered questions on behalf of the investigator, leading one lawyer to object, "Let him answer." This occurred with other witnesses as well. At the close of the investigator's testimony, the President of the panel said, "We thank you for your efforts."

Witnesses were frequently asked to speculate rather than testify concerning events they had observed. The court permitted a key witness to be asked such questions as, "Did you feel that she was under coercion?", "Do you believe . . . ?" and "Did you expect . . . ?" One prosecutor asked a witness, "Do you believe that your arrest by the Iraqi authorities was because someone informed against you?" The witness replied, "I think someone informed against me." Much of the testimony of prosecution witnesses was based on information provided by persons who did not testify in court. Defendants and their lawyers did not always have an opportunity to examine documentary evidence before it was shown to the judge or prosecutor and they were questioned about it. During the trial of Ibtisam al-Dakhil, the investigator

gave the court, but not the defendant, copies of articles she had allegedly written for *al-Nida'*. Her lawyer, 'Imad al-Saif, said, "It is difficult for us if they are just now presenting [this evidence]."

The prosecutor who summed up the evidence against the defendants called them "evil collaborators" and "you rascals, spreading rumours and fabrications to weaken the resistance". Immediately following his conclusion, the President of the panel said, "You have done well!" Lawyers for the defendants argued that there was no evidence that defendants had passed intelligence information to the Iraqis, that the only evidence against them was based on statements by defendants indicating that they had been coerced by the Iraqi occupation forces, and on "secret sources" or hearsay testimony. The President of the panel interrupted one lawyer, Maryam 'Ali, during her closing argument on behalf of Bassam Ramez al-Haji, a plumber later acquitted who was accused of collaborating with the Iraqis by checking a broken toilet bowl, to say, "Stop talking about secret sources." The other four judges laughed. Six of the 24 defendants were sentenced to death (subsequently commuted to prison terms); ten were sentenced to prison terms and eight were acquitted. Amnesty International considers the 15 defendants who were convicted and are still in prison as prisoners of conscience.

***Denial of the right to appeal.*** In contrast to people convicted in ordinary criminal courts in Kuwait, who are able to appeal against their convictions and sentences, defendants in the Martial Law Court were denied the fundamental right to appeal against their conviction and sentence to a higher tribunal according to law as recognized in Article 14 (5) of the ICCPR. Instead, defendants were limited to an automatic *in camera* review, with no opportunity to be represented by a lawyer, by three judicial councillors who could make non-binding recommendations to the Crown Prince. The standard applied by the councillors were never published and it is not clear how they were to review the decisions of the Martial Law Court without written judgments explaining the reasons for the verdicts and sentences. Although the UN Judiciary Principles provide that court decisions may not be subject to revision (Principle 4), the Crown Prince was free to reduce, confirm or even increase sentences to the maximum permitted by law. After appeals by Amnesty International and many others, the Crown Prince commuted all death sentences and reduced or suspended some prison sentences.<sup>13</sup> In a January 1992 letter to Amnesty

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<sup>13</sup> The sentences of at least six defendants, Sabah Hassan Ahmad Shamkhi, 'Issa 'Ajlan Sajed, Sabah Nuri 'Abd al-Nabi Dakhil, 'Issa 'Abd al-Hafidh Hussain 'Issa, Ihsan Sabri Sawadi al-Mansuri and Bassem Shafiq Ibrahim, were

International, the Minister of Justice and Legal Affairs stated that the verdicts and sentences had been "examined very carefully" and that the right to appeal would not be extended to those convicted under Martial Law because the decisions of the Crown Prince were final, Martial Law was no longer in force and that any new legislation could not have retroactive effect. Reopening a case or extending the right to appeal to persons previously convicted would not, however, violate international standards prohibiting retroactive punishment.

## **UNFAIR TRIALS BEFORE THE STATE SECURITY COURT**

Trials of alleged "collaborators" before the State Security Court failed to satisfy international standards for fair trial.<sup>14</sup> Although after the end of Martial Law lawyers generally had access to the files in State Security Court cases before trial and could re-examine witnesses who had testified in the hearing before the prosecutor, many of the same violations of the right to a fair trial which occurred in the Martial Law Court have continued to take place. Defendants have often had to answer vague and broadly worded charges. In some of the cases observed by Amnesty International, the court did not warn defendants of their right to remain silent before the court or prosecutor began questioning them. It permitted the prosecutor to rely on "secret sources" and hearsay testimony and to use documentary evidence which had not been shown to the defendant or defence lawyer before the defendant was questioned. It did not vigorously investigate claims of torture or exclude "confessions" made after torture.

Several defendants in trials observed by Amnesty International, including Muhammad 'Ali Ahmad Daifallah, were not warned of their right to remain silent before they were questioned by the court. The prosecutor again relied in several trials on an investigator whose testimony was based on a "secret source". During the trial of eleven Palestinians of Jordanian nationality on 4 May 1992 charged with belonging to the *Jabhat al-Tahir al-'Arabiyya* (the military wing of the Arab Liberation Front),<sup>15</sup> the court continued

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suspended. Amnesty International has requested the authorities to provide information about their whereabouts, but it has not received a reply.

<sup>14</sup> Unfair procedures in the State Security Court are not limited to trials of alleged "collaborators". Amnesty International expressed its concern on 1 July 1993 that the trial of 14 defendants, 12 of whom face the possibility of death sentences, accused of participation in an alleged assassination attempt on former United States President George Bush failed to satisfy international minimum standards. A hearing in these cases has been postponed until 5 March 1994.

<sup>15</sup> 'Imad al-Din Mahmud Nimr, Muhammad 'Ali Ahmad Daifallah, Basil 'Ali Ahmad Daifallah, Akram Shaker Ahmad, Al-Mu'taz Billah Muhammad Saleh, Muntasir Muhammad Saleh, Hussain Rashed Hussain, Mu'ayyed Yassin Hussain, Iyad Muhammad 'Issa, Bassem Hassan Muhammad, all of whom were sentenced to death, and Hussam Muhammad Rashed, a minor who was sentenced to four years' imprisonment. The Court of Cassation is reviewing this case and has postponed a hearing until 28 February 1994.

questioning one of the defendants after his lawyer had stepped out of the room. Such questioning of witnesses in the absence of the defence lawyer occurred in a hearing in another case on 9 May 1992 observed by Amnesty International. During the Arab Liberation Front trial, a prosecution witness gave the prosecutor a list of names of alleged "collaborators" which was not shown to the defendant or to his attorney before the defendant was questioned about it. The prosecutor repeatedly asked witnesses to speculate about the motives of the defendants. The court permitted the investigator to testify based on "secret sources" in other cases, including the hearing in the case of 'Adil Khaled Hawas on 5 May 1992.

According to information available to Amnesty International, as of 31 January 1994, at least 95 defendants had been convicted by the State Security Court and 47 had been acquitted. Twenty-four of those convicted were sentenced to death (two *in absentia*). One person, 'Abd al-Rahman Hassan Khafi, an Iraqi national, was executed on 5 May 1993 and two death sentences were reduced by the Court of Cassation, one to life and one to six months' imprisonment. Trials against scores of others are continuing. Some of those acquitted by the State Security Court still in detention.

*Continued failure to investigate complaints of torture adequately.* Although the State Security Court referred complaints of torture during trials observed by Amnesty International in May 1992 to a government doctor for examination, these examinations often took place more than one year after the torture was alleged to have occurred and signs of torture would have been extremely difficult to detect in many cases, even for experts. The court did not invite qualified independent experts to examine defendants or independent observers to be present during examinations. Several Kuwaiti lawyers informed Amnesty International that in some cases handled by other lawyers the government doctor issued reports stating that torture had occurred and the State Security Court dismissed the case on this ground, but Amnesty International has not been able to document any such cases.

Investigations during trials by the State Security Court of complaints of torture were cursory. It would simply ask the person who had custody of the defendant whether he had tortured him or seen signs of torture. Two defendants, Muhammad Dakhil Jaber Fahad and Ahmad Shanawa Mash'al al-Zufaiyri, complained during a hearing on 4 May 1992 that they had been beaten up in custody the day before. One said, "We get punished for what we say in court" and asked the court for protection. The prosecutor responded that when defendants were in his custody "no one can get to them" and said the complaints were false. A prosecution witness when asked about the alleged beatings said, "I was in charge of the interrogation and such things never took place. None of the defendants was beaten or forced to give a confession." The court asked no further questions, but referred the complaints to the prosecutor. Amnesty International has not been able to learn the results of the investigations in these two cases, but it has learned that Ahmad Shanawa Mash'al al-Zufaiyri was sentenced to seven years' imprisonment. When a member of the security

forces was questioned on 5 May 1992 whether he had seen signs of torture on 'Adil Khaled Hawas, he said, "I didn't see anything." When the court then asked him about medical reports which indicated the defendant might have been tortured, he said "Probably those 'signs of torture' were injuries from another accident." This seemingly unfounded statement demonstrates the need for qualified independent experts to have access to the files. 'Adil Khaled Hawas was sentenced to life imprisonment.

In the cases above the court then requested the prosecutor to investigate the allegations. Information obtained by Amnesty International suggests that such court-ordered investigations were inadequate. During the hearing on 4 May 1992 observed by Amnesty International in the case of the eleven defendants accused of membership in the military wing of the Arab Liberation Front, the defendants said that they had been beaten and that their "confessions" were the result of torture. Muhammad 'Ali Ahmad Daifallah said, "I was tortured, and have marks of burning on my arm." His brother, Basil 'Ali Ahmad Daifallah, showed the court large scars on his back and said that he was tortured while blindfold by an Egyptian working for the Kuwaiti authorities. Hussam Muhammad Rashed, a minor, said that he was beaten at Samiyya Police Station by Egyptians on the soles of his feet and on his arm and showed the court scars which were consistent with his testimony.

The court sent all the defendants to the *Idarat al-Adilla al-Jana'iyya* (Criminal Investigation Department in the Ministry of Interior) "to investigate what types of injury they suffered, why they had the injuries and the instruments used to inflict them". According to the judgment, the Criminal Investigation Department reported that "all the accused, apart from Akram Shaker Ahmad al-Damiri, had different injuries which were "slight" and could not cause severe pains. This is with the exception of the left foot of the eighth accused person, Hussain Rashed Hussain al-Hilu." The court summoned the Chief Forensic Doctor in the Criminal Investigation Department to a hearing on 5 July 1992. The summary of his testimony by the court indicates that much of it is speculative:

"all the injuries of the accused - apart from the left foot of Hussain Rashed Hussain al-Hilu are slight injuries which can be caused by accident; he said that the rest of the injuries could have been self-inflicted or caused by the friends of the accused. He said that it is difficult to determine the date of these injuries, they could have happened either a few years ago or a few months ago. . . The injuries are slight; they have only affected the skin; they did not reach the internal tissues and did not damage the nerves."

According to the court, the doctor confirmed that the "slight" injuries could not have forced the defendants to confess to crimes they did not commit. There is no medical definition of "slight injuries" and nothing which would permit a medical evaluation of the testimony. This illustrates the need for qualified independent examinations of the evidence on which such conclusions are based.

Instead of placing the burden of proof on the prosecutor to prove beyond a reasonable doubt that the "confessions" were voluntary, the court said that "the injuries were not proved to have been caused by beatings." Moreover, the court did not question the Chief Forensic Doctor about how he had conducted the medical examination or what other steps the Criminal Investigation Department had taken to investigate these cases and it considered the doctor's speculation that the injuries could have been self-inflicted or caused by his friends and that they could not have led to confessions as fact. In addition, according to the lawyer for one of the defendants, 'Iyad Muhammad 'Issa, the State Security Court did not discuss a medical report, no. 1326/1992, which stated that he had traces of a wound on the left eye-brow and the left foot which could have been inflicted when the defendant was in custody. All eleven of the defendants were convicted and ten were sentenced to death.

Other defendants who made complaints of torture during State Security Court trials observed by Amnesty International included Khaled Salem 'Abdallah al-'Asfur (sentenced to life imprisonment) and Sa'ida Musa Hussain (verdict unknown). The Kuwaiti authorities have not responded to Amnesty International's requests to see the medical reports and the results of any investigations in these cases.

***Denial of the right to appeal.*** Defendants convicted by the State Security Court continue to be denied the full right to appeal which defendants convicted by ordinary criminal courts have. The September 1991 amendment to the State Security Law granted them only a limited right to review of legal errors by cassation. Kuwaiti lawyers have told Amnesty International that such review is very narrowly interpreted. For example, violations of the Criminal Procedure Code which do not carry any penalties, such as the failure of the judge to warn witnesses of their right to remain silent, are not grounds for reversal of the judgment.

***Denial of the right to life.*** The execution of anyone after an unfair trial is a summary or arbitrary execution. The UN Commission on Human Rights has condemned summary or arbitrary executions as an "abhorrent practice . . . which represents a flagrant violation of the most fundamental right, the right to life".<sup>16</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has emphasized that

"proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries. All defendants in capital cases must benefit from the fullest guarantees for an adequate defence at all stages of the proceedings, including adequate provision for State-funded legal aid by competent defence lawyers. Defendants must be presumed innocent until their guilt has been proven without leaving any room for reasonable

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<sup>16</sup> Resolution 1993/71 of 10 March 1993.

doubt, in application of the highest standards for the gathering and assessment of evidence. All mitigating factors must be taken into account. A procedure must be guaranteed in which both factual and legal aspects of the case may be reviewed by a higher tribunal, composed of judges other than those who dealt with the case at the first instance."<sup>17</sup>

The UN Special Rapporteur stated concerning Kuwait in the same report that he

"remains concerned that in proceedings before the State Security Court, defendants do not benefit fully from the right to appeal as set forth in the pertinent international instruments, since they are deprived of a stage of appeal which fully reviews the case, both with regard to facts and legal aspects. This full appeal procedure is, however, provided for in ordinary criminal proceedings."<sup>18</sup>

He called upon the Government of Kuwait "to provide for full appeal procedures in trials before the State Security Court and to ensure that those facing the death penalty also benefit fully from all other safeguards and guarantees as contained in the pertinent international instruments".<sup>19</sup>

Amnesty International is unconditionally opposed to the death penalty, which it regards as the ultimate cruel, inhuman or degrading punishment and a violation of the right to life. The death sentences handed down by the State Security Court and the execution of 'Abd al-Rahman Hassan Khafi, after unfair trials without the full right of appeal deny the fundamental right to life. Even if the death penalty were enforced by scrupulous procedures, the risk of error is always present, yet the penalty is irrevocable. Furthermore, there is no reliable evidence that the death penalty deters crime more effectively than other punishments.

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<sup>17</sup> UN Doc. E/CN.4/1994/7, para. 679.

<sup>18</sup> UN Doc. E/CN.4/1994/7, para. 404.

<sup>19</sup> Ibid.

## DEFENDANTS WHO WERE ACQUITTED BUT ARE STILL DETAINED

Some defendants acquitted by the State Security Court in 1992 and 1993 are detained in various deportation centres, including the Expulsion Centre in Kuwait Central Prison and in Talha Deportation Centre in Farwaniyya. The latter is a converted school and hundreds of the *bidun* community continue to be detained there in overcrowded conditions, lacking basic facilities. In November 1992, there were reports that detainees at Talha had been tortured or ill-treated. Nazem Ya'qub Yunis, an Iraqi acquitted of "collaboration" charges by the State Security Court on 6 June 1993 is currently held there. Another Iraqi, Karim Hadi Swaid, acquitted by the State Security Court on 30 August 1992 has been held there for over one year. Similarly, 'Ali Hadid Rashid and Marwan Elias 'Abd al-Massih remain in detention in Talha, pending deportation. If the detainees held in Talha refuse to be expelled to Iraq, they face little hope of recognition by the United Nations High Commission for Refugees (UNHCR), particularly if they are members of the *bidun* community. It is unlikely they will be forcibly and illegally expelled to Iraq, but their alternative is to remain indefinitely in Talha Deportation Centre.

Ahlan Muhammad, an Iraqi woman with a baby son, has been in the expulsion section of Kuwait Central Prison since March 1992. She was tried and found not guilty of the charges against her. She attempted to leave the country but was unable to do so as the prosecution asked for her case to be reviewed. She is believed to be still detained. Imam Dhannun 'Abd al-Latif, a 32 year old Iraqi laboratory technician who worked in the Faculty of Medicine at Kuwait University was arrested on 12 June 1991. She was cleared of charges against her in the State Security Court on 13 October 1993, yet she remains held in Kuwait Central Prison, pending deportation. Amnesty International has sought information concerning these two women from the Government of Kuwait, yet has received no response.

## RECOMMENDATIONS

- ◆ **Commute death sentences.** All death sentences should be commuted.
- ◆ **Retry all persons convicted by the Martial Law Court and the State Security Court.** Since the trials before the Martial Law Court and the State Security Court were unfair, all defendants convicted by these special courts should be retried by an ordinary criminal court in accordance with international standards for fair trial. They should be extended the same rights under the Kuwaiti Constitution and Criminal Procedure Code as defendants tried in ordinary criminal courts, including the full right to appeal to a higher tribunal according to law. All trials in the State Security Court should be halted until all defendants can be guaranteed a fair trial.

◆ **Abolish all special courts.** The special State Security Court should be abolished and Martial Law No. 22 of 5 June 1967 should be amended to require all trials during a period of Martial Law to be in ordinary courts in accordance with ordinary criminal procedures.

◆ **Amend the law to be consistent with international standards.** The Criminal Procedure Code and the state security provisions in the Penal Code should be amended to ensure that they are consistent with international human rights standards, in particular by ensuring that defendants in all cases are brought promptly before a judge, that all people under any form of detention have the right to take proceedings before a court in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is unlawful and that lawyers have the right to represent their clients effectively at every stage of the proceedings. Crimes involving state security should be narrowly defined to give adequate notice of what conduct is prohibited and to exclude non-violent acts of freedom of association, assembly and expression.

◆ **Exclude all confessions made under torture.** All reports of torture should be investigated promptly and impartially. All confessions which were induced by torture, ill-treatment or coercion and all statements obtained in the absence of a lawyer or otherwise illegally obtained should be excluded as evidence, except against a person accused of torture as evidence the statement was made. All persons who have been tortured should be given fair and adequate compensation and those responsible should be brought to justice.

◆ **Release all persons who were acquitted or who were released.** All defendants who were acquitted by the Martial Law Court or the State Security Court, as well as those against whom charges were dropped by the prosecutor or dismissed at renewal hearings, who are in detention should be released and their safety assured. Adequate procedures to apply for asylum and other measures should be taken to ensure that no one is deported to a country where he or she faces the possibility of the death penalty, extrajudicial execution, torture or detention as a prisoner of conscience.

◆ **Ratify human rights treaties.** Kuwait should ratify human rights treaties, including the International Covenant on Civil and Political Rights, together with its (First) Optional Protocol, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## Appendices

A. Cases of individuals sentenced after being convicted of various "collaboration" charges in Martial Law trials held from May to June 1991

- B. Defendants who appeared in Martial Law Court hearings and on government lists who are not accounted for by the Government
- C. Cases of individuals convicted of "collaboration" charges and sentenced to death by the State Security Court in 1992 and 1993
- D. Some of the more than 70 individuals convicted of various "collaboration" charges by the State Security Court and now serving prison terms